



Rockdale County Board of Commissioners

Priority:  
RUSH/30/60/90

Agenda Item Summary: Item #

MEETING DATE:

Requesting Department  
Planning and Development

Requested Action (Identify appropriate Action or Motion, purpose, cost, timeframe, etc.)

Signature for Maintenance & Performance Agreements between the developer, Summit Creek Properties, LLC and the Board of Commissioners. Each agreement is accompanied by a 2 year Letter of Credit.

Requirement for Board Action (Cite specific Board policy, statute or code requirement)

UDO Section 302

Is this Item Goal Related? (If yes, describe how this action meets the specific Board of Commissioners Focus Area or Goal)

☐

Yes

☒

No

Summary & Background

(First sentence includes Department recommendation. Provide an executive summary of the action that gives an overview of the relevant details for the item.)

A subdivision was approved by the Planning Commission and built according to subdivision regulations. The Final Plat is approved and ready to be recorded in the Clerk of Superior Court.

The developer has signed a Maintenance & Performance agreement and posted a Letter of Credit for each agreement as required by UDO Section 302-28.

Fiscal Impact / Funding Source

(Include projected cost, approved budget amount and account number, source of funds, and any future funding requirements.)

Exhibits Attached (Provide copies of originals, number exhibits consecutively, and label all exhibits in the upper right corner.)

Copy of Final Plat, original Agreements (2) and copies of Letter of Credits (2) attached.

Source of Additional Information

(Type Name, Title, Department and Phone)

Marshall W. Walker – Director of Planning and Development

Department Head/Director's Approval

Typed Name and Title

Marshall W. Walker

Phone

770-278-7100

Signature

Marshall W. Walker

Date

7/26/16

Chief of Staff  
Approval

100  
5/10/16

**ROUTE SLIP FOR CONTRACTS, AGREEMENTS, AND MOU'S**

FOR PURCHASING USE ONLY

Tracking#

Contract#

Actual BOC Date:

**FOR USE BY THE USER DEPARTMENT**Department: Planning & Development Contact Name & Extension: Candy McCullough x7125Project Title and Brief Summary: Maintenance and Performance Agreements for new streets in Summit Creek Unit IIITerm of Contract and/or Project: Summit Creek Unit IIIVendor Name: N/A Contact: \_\_\_\_\_

Address/Phone#: \_\_\_\_\_

Contract \$ \_\_\_\_\_ Funding Source and Account Number #: \_\_\_\_\_

Priority: NEXTBOCKMTG / ☒ / 60 / 90 (Choose One) Comments/Justify NEXTBOCKMTG: \_\_\_\_\_Director/Elected Official Signature: Marshall W. Walker Date: 7/26/16**FOR USE BY PURCHASING AND CONTRACTING DIVISION OF FINANCE**

Date and Time Received: \_\_\_\_\_ Date and Time: \_\_\_\_\_

☐ ITB ☐ RFP ☐ Agreement/Contract ☐ Change Order No \_\_\_\_\_ ☐ GSA/SWC \_\_\_\_\_☐ Approved Sole Source ☐ Other (specify): \_\_\_\_\_

Projected BOC Meeting Date: \_\_\_\_\_

Comments/Notes: \_\_\_\_\_

Procurement Officer Signature: \_\_\_\_\_

**FOR USE BY THE DIRECTOR OR FINANCE**

Date and Time Received: \_\_\_\_\_ Date and Time Out: \_\_\_\_\_

Funding Source: \_\_\_\_\_ Budget Amount: \_\_\_\_\_

Finance Officer Signature: \_\_\_\_\_

**FOR USE BY COUNTY ATTORNEY**Date and Time Received: \_\_\_\_\_  \_\_\_\_\_☐ Returned to Purchasing with comments \_\_\_\_\_ Date and Time Out: \_\_\_\_\_

Comments: \_\_\_\_\_

☐ Received from reroute (if applicable): \_\_\_\_\_ Date and Time In: \_\_\_\_\_☐ Approved as to form and Returned to Purchasing \_\_\_\_\_ Date and Time Out: \_\_\_\_\_

County Attorney Signature: \_\_\_\_\_

**FOR USE BY THE CHIEF OF STAFF**

Date and Time Received: \_\_\_\_\_ Date and Time Out: \_\_\_\_\_

☐ Approved for Agenda Placement and Forwarded to County Clerk \_\_\_\_\_ Agenda Date: \_\_\_\_\_

Comments/Notes: \_\_\_\_\_

Chief of Staff Signature: \_\_\_\_\_

BOARD OF COMMISSIONERS

RICHARD A. ODEN, CHAIRMAN & CEO  
OZ NESBITT, SR., COMMISSIONER POST I  
DR. DOREEN WILLIAMS, COMMISSIONER POST II



DEPARTMENT OF PLANNING & DEVELOPMENT

MARSHALL W. WALKER, DIRECTOR  
OFFICE: (770) 278-7100  
Fax: (770) 278-8940

July 26, 2016

TO: Marshall W. Walker, Director

RE: Summit Creek Unit III  
Maintenance Letter Of Credit (LOC) & Maintenance Agreement

Please find enclosed the **original** Maintenance Agreement that accompanies a copy of the Letter of Credit in the amount of \$28,489.00 from United Bank for the above named subdivision. This agreement will be in effect for two years from the date of the agreement. The agreement, between the developer and Rockdale County Board of Commissioners guarantees the work that has already been performed will be maintained according the Unified Development Ordinance. At such time the agreement is signed, the plat may be recorded. Please contact me with any questions you may have or let me know if I can be of service to you.

Sincerely,

Candy L. McCullough  
Development and Business Relations Manager  
770-278-7125

**MAINTENANCE AGREEMENT**  
**Sec. 302 - 28 (i)**

**GEORGIA, Rockdale County**

THIS AGREEMENT, made this 19<sup>TH</sup> day of MAY, 2016, by and between SUMMIT CREEK PROP. L.L.C. hereinafter called the "Owner" as a party of the first (Developer)

part, and Rockdale County, a political subdivision of the State of Georgia, hereinafter called "County" as party of the second part. The words "Owner" and "County" include their respective heirs, successors and assigns.

**WITNESSETH:** That, whereas Owner has submitted to the County a Final Plat subdividing the property of the Owner, a copy of which is on file in the office of the Planning & Development Department of said County, said plat entitled as follows:

SUMMIT CREEK UNIT III.

(Development)

- All streets as shown on said plat and all drainage facilities shall be maintained in accordance with the minimum standard requirements of Rockdale County on or before MAY 20, 2018  
(2 years from date of Recorded Final Plat)

not to exceed 2 years from the date of this contract. The amount of the Maintenance Bond shall be equal to ten percent of the actual cost of construction. The estimated cost of such grading, paving and construction is \$284,890.00 as determined by one of the following:

- copies of contractor agreements or actual invoices paid (Attach)
  - determined by Director of Planning & Development
- The Owner hereby warrants to the County that said streets and drainage facilities shall be maintained in compliance with said minimum standard requirements of the Rockdale County Unified Development Ordinance in force as of the date of this agreement to ensure the continued function and good condition of public improvements being constructed as part of a subdivision to fulfill these requirements until such bonds are released by the County. That this warranty shall apply only in such instances of noncompliance with such standard requirements as to which the County shall have given written notice to the owner at any time or times within two years from the date of the completion of the construction of said streets and drainage facilities and the acceptance of said streets and public drainage system for public purposes by the county.
  - The Owner agrees to furnish a guarantee or a surety to Rockdale County with good and sufficient security acceptable to the County in the sum of \$28,489.00 dollars, guaranteeing the faithful performance of this agreement.

**SAID GUARANTEE OR SURETY SHALL BE OF EVEN DATE WITH AGREEMENT OR SUBSEQUENT DATE, BUT IN NO CIRCUMSTANCE SHALL THE BOND EXPIRE PRIOR TO THE EXPIRATION OF THIS CONTRACT.**

Surety or Guarantee UNITED BANK Number \* 413054

**INDEMNIFICATION**

The owner hereby agrees to indemnify the County and hold the County harmless from any and all damages which the County may suffer and from any and all liability, claims including interest thereon, demands, attorney's fees and costs of defense, or judgment against it, arising from errors or omissions in the design or construction of the development or from the effects of storm water flows onto, from, or across any and all lands as a result of the development, and owner expressly agrees to defend against any claims brought or actions filed against the County where such claim or action involves in whole or in part, the subject of the indemnity contained herein whether such

## INDEMNIFICATION

The owner hereby agrees to indemnify the County and hold the County harmless from any and all damages which the County may suffer and from any and all liability, claims including interest thereon, demands, attorney's fees and costs of defense, or judgment against it, arising from errors or omissions in the design or construction of the development or from the effects of storm water flows onto, from, or across any and all lands as a result of the development, and owner expressly agrees to defend against any claims brought or actions filed against the County where such claim or action involves in whole or in part, the subject of the indemnity contained herein whether such claims or actions are rightfully or wrongfully brought or filed. This indemnification shall commence upon the date of this agreement and shall continue in full force and effect for a period of 10 years thereafter.

## SEVERABILITY

If any section, subsection, sentence, clause, or phrase of this agreement shall be declared or otherwise adjudged unconstitutional or void, the validity of the remaining portions of this agreement shall not be affected thereby, it being the intent of Rockdale County in adopting this agreement that no portion or provision of this agreement shall become inoperative or fail by reason of the unconstitutionality or invalidity of any section, subsection, sentence, clause, phrase, or provision of this agreement.

## ASSIGNMENT OF LIABILITY

The owner hereby agrees that any assignment or transfer of the provisions of the Indemnification section, above, in whole or in part, to any successor in title or other person, shall be recorded with the Clerk of the Superior Court of Rockdale County and a copy of said legal instrument, as recorded, shall be filed with the Department of Planning & Development.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

SIGNED, SEALED AND DELIVERED in the presence of:

  
SIGNATURE (Corporate Seal)

Seal: MANAGING Member

SUMMIT CREEK PROPERTIES LLC

OWNER NAME (Typed or Printed)

889 Commerce Pl. 'E'  
OWNER ADDRESS CONYERS GA. 30095

678-413-1185  
OWNER PHONE

WITNESS

NOTARY PUBLIC



ROCKDALE COUNTY,  
PARTY OF THE SECOND PART

Richard A. Oden, Chairman & CEO

ATTESTED BY: CLERK  
Rockdale County, Georgia



Member FDIC

7200 Highway 278  
Covington, Georgia 30014  
(678) 342-7211

**SURETY AGREEMENT FOR MAINTENANCE**

**LETTER OF CREDIT**

**COPY**

**ISSUE DATE: May 19, 2016**  
**EXPIRATION DATE: May 19, 2018**  
**LETTER OF CREDIT #**

**SUBJECT: SURETY AGREEMENT FOR PERFORMANCE (LETTER OF CREDIT)**

**PROJECT NAME: Summit Creek Unit 3**

To Whom It May Concern:

This is to advise that United Bank, as Surety, is holding at the request of Summit Creek LLC, as Principal, the amount of \$28,489 as an assignment that the subject facility will be *maintained* in accordance with the Rockdale County Unified Development Ordinance and further that this money will not be released until such time that we are notified in writing by the Rockdale County Planning & Development Department that the work has been properly and satisfactorily completed in accordance with the Maintenance Agreement for the project executed by the Principal on \_\_\_\_\_, 20\_\_\_\_\_.

This is also to advise that if the Principal should fail to perform as stipulated in this said agreement, this party as Surety will reimburse Rockdale County the amount of the cost of the needed repairs providing, however, the cost is not to exceed the amount held as an assignment.

All draws must be presented to United Bank at 315 Thomaston St, Barnesville, GA 30204 along with a copy of this original letter of credit.

This Letter of Credit shall expire in twenty-four (24) months, 5/19/18. Drafts will not be accepted beyond the expiration date.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision), International Chamber of Commerce Publication No. 600, and any subsequent revisions thereof approved by a congress of the International Chamber of Commerce and adhered to by us.

Sincerely,  


Patsy Mitchell, AVP  
NMLS #211936  
United Bank NMLS# 413054

Credit Admin  
2016140

BOARD OF COMMISSIONERS

RICHARD A. ODEN, CHAIRMAN & CEO  
OZ NESBITT, SR., COMMISSIONER POST I  
DR. DOREEN WILLIAMS, COMMISSIONER POST II



DEPARTMENT OF PLANNING & DEVELOPMENT

MARSHALL W. WALKER, DIRECTOR  
OFFICE: (770) 278-7100  
Fax: (770) 278-8940

July 26, 2016

TO: Marshall W. Walker, Director

RE: Summit Creek Unit III  
Performance Letter Of Credit & Performance Agreement

Please find enclosed the **original** Performance Agreement that accompanies a copy of the Letter of Credit in the amount of \$68,934.00 from United Bank for the above named subdivision. This agreement will be in effect for two years from the date of the agreement. The agreement, between the developer and Rockdale County Board of Commissioners guarantees the work will be completed, as promised according the Unified Development Ordinance. At such time the agreement is signed, the plat may be recorded.

Please contact me with any questions you may have or let me know if I can be of service to you.

Sincerely,

Candy L. McCullough  
Development and Business Relations Manager  
770-278-7125

# PERFORMANCE GUARANTEE AGREEMENT

Unified Development Ordinance Sec. 302-28

GEORGIA, Rockdale County

THIS AGREEMENT, made this 19<sup>TH</sup> day of MAY 2016 by and between SUMMIT CREEK P&P, LLC, hereinafter called the "Owner" as a party of the first part, and Rockdale County, a political subdivision of the State of Georgia, hereinafter called "County" as party of the second part. The words "Owner" and "County" include their respective heirs, successors and assigns.

**WITNESSETH:** That, whereas Owner has submitted to the County a plat subdividing the property of the Owner, a copy of which is on file in the office of the Planning & Development Department of said County, said plat entitled as follows: SUMMIT CREEK P&P, LLC The Owner shall provide the County with a certified copy of this properly executed improvement agreement covering all of the work to be done to complete all improvements.

- All improvements, whether required by this Title or constructed at the Owner's option, shall be constructed in accordance with the standards and provisions of the Rockdale County Unified Development Ordinance in force as of said date of this agreement.
- All required improvements shall be constructed satisfactorily within the period of TWO YEAR to be completed by 5/20/2018  
(not to exceed 24 months from date of agreement)
- The projected total cost for each improvement shall be determined by either of the following:
  - An estimate prepared and provided by the applicant's engineer and approved by the director. (Attach)
  - A copy of an executed construction contract with a bona fide and qualified contractor. (Attach)
- The estimated cost necessary to ensure the construction of improvements is \$ 55,147
- Guarantees and Sureties may be allowed for the following types of improvements:

- |   |  |
|---|--|
| <input type="checkbox"/> Stormwater management facilities | <input type="checkbox"/> Street surface course         |
| <input checked="" type="checkbox"/> Sidewalks             | <input type="checkbox"/> Landscaping and tree planting |
| <input type="checkbox"/> Trails or walking paths          | <input type="checkbox"/> Recreational facilities       |

and will be completed by 5/20/2018.  
(Date of expiration of Guarantee/Surety)

- Upon failure of the applicant to make required improvements (or to cause them to be made) according to the schedule for making those improvements, the county shall utilize the surety provided in connection with the agreement to complete the improvements. Said surety shall be of even date with agreement.

Surety or Guarantee UNITED BANK

- At the applicant's request, the amount of the surety may be reduced once during the life (term) of the agreement, subsequent to the completion, inspection and acceptance of the improvements by the county.
- It shall be the responsibility of the Owner to petition the County in writing at least sixty (60) days prior to the termination of the completion period for release of the surety and to warrant that all improvements subject to the guarantee or surety have been completed to fulfill all the requirements of this title.



- claims or actions are rightfully or wrongfully brought or filed. This indemnification shall commence upon the date of this agreement and shall continue in full force and effect for a period of 10 years thereafter.

#### SEVERABILITY

If any section, subsection, sentence, clause, or phrase of this agreement shall be declared or otherwise adjudged unconstitutional or void, the validity of the remaining portions of this agreement shall not be affected thereby, it being the intent of Rockdale County in adopting this agreement that no portion or provision of this agreement shall become inoperative or fail by reason of the unconstitutionality or invalidity of any section, subsection, sentence, clause, phrase, or provision of this agreement.

#### ASSIGNMENT OF LIABILITY

The owner hereby agrees that any assignment or transfer of the provisions of the Indemnification section, above, in whole or in part, to any successor in title or other person, shall be recorded with the Clerk of the Superior Court of Rockdale County and a copy of said legal instrument, as recorded, shall be filed with the Department of Planning & Development.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

SIGNED, SEALED AND DELIVERED in the presence of:

SUMMIT CREEK PROPERTIES LLC  
PARTY OF THE FIRST PART (Owner)

[Signature]  
SIGNATURE (Corporate Seal)

Seal:

ALTON HOUZWORTH  
NAME (Typed or Printed)

[Signature]  
WITNESS

MAE MEMBER  
TITLE

[Signature]  
NOTARY PUBLIC



ATTESTED BY:

[Signature]  
SIGNATURE (Corporate Officer)

GERALD SHEPPARD  
NAME (Typed or Printed)

Member  
TITLE

ROCKDALE COUNTY,  
PARTY OF THE SECOND  
PART

Richard A. Oden, Chairman & CEO

ATTESTED BY: CLERK  
Rockdale County, GA



Member FDIC

7200 Highway 278  
Covington, Georgia 30014  
(678) 342-7211

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This is also to advise that if the Principal should fail to perform within \_\_\_\_\_ days, this party as Surety will reimburse Rockdale County the amount of the cost of the needed improvements; provided, however, the cost is not to exceed the amount held as an assignment.

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